



District 12

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Jack Broadbent, Air Pollution Control Officer
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Via electronic mail to:

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Re: Updated Comments of United Steelworkers (USW) District 12 on Draft Regulation 12, Rule 16: Petroleum Refining Facility-Wide Emissions Limits

Dear Mr. Broadbent,

United Steelworkers (USW) District 12 is writing you to offer updated comments on Draft Regulation 12-16, which are currently under consideration by the Bay Area Air Quality Management District (BAAQMD). While we strongly support action to reduce greenhouse gases (GHGs) and emissions of criteria pollutants and toxic air contaminants (TACs) that can harm workers and communities, despite our best efforts and despite extensive discussions with technical experts, we continue to have unanswered questions about rule 12-16. We therefore respectively urge the board to postpone a decision on this draft rule – beyond the current May 31 meeting date – until our concerns are adequately addressed.

Our fundamental questions concern a) whether local emission caps on GHGs at refineries will have the intended impact of reducing emissions of GHGs overall; b) whether those same caps are an effective method for reducing the emissions of criteria pollutants and TACs, which are a primary cause of negative health impacts on public and worker health; and c) whether the rule will cause refiners to rely more heavily on imported fuels, if they are prohibited from growing their business in California – resulting in a larger GHG footprint for California's fuels; higher fuel prices that will be felt most directly by lower income residents; reduced ability of the California fuel supply to respond quickly in the event of a refinery failure or upset; and job loss at refineries and all the local businesses that are part of the same economic ecosystem.

Until we can predict with some measure of certainty that rule 12-16 will not increase the import of fuels with a greater carbon footprint and thus send us in the wrong direction on GHG reduction, and until we can say with certainty that it will significantly improve the health of local residents in refinery communities, we urge the board to table this rulemaking. Further, we support the proposal of the California Air Resources Board to establish an “industrial source action committee.” We support this “first do no harm” approach so the board can more thoroughly address the questions we are raising, which are intended to prevent unintended and harmful consequences. Should we be asked, the USW is committed to serving on this committee.

USW is the largest manufacturing union in North America, representing 850,000 members in the United States and Canada. USW District 12 represents the 11 western-most U.S. states, including California. Our membership includes many oil refinery workers, including members of Local 5 in Martinez and Local 326 in Rodeo, and we write this update on behalf of these members in particular. Note that our comments and request should not be confused with any comments offered by oil industry management. For several decades, the USW has played a key role in helping to improve worker safety and health, environmental justice and climate protection. From our original efforts in helping to launch the Clean Air Act, we have worked hard to advance policies that protect the safety and economic security of workers, reduce carbon emissions, and open new opportunities for good jobs in a clean economy.

We have valuable working relationships with a diverse alliance of labor, environmental and community partners. We have worked with this alliance in advising the California Department of Industrial Relations (Cal/OSHA) and California EPA regarding the state’s new Process Safety Management (PSM) and Accidental Release Program (Cal/ARP) regulations, which apply to oil refineries. We have also consulted with alliance members about Rule 12-16.

We have based our questions and our recommendation for postponement on the day-to-day experiences of our members in oil refineries, on discussions with partners and on our understanding of:

- “Best engineering practices” in the refinery industry;
- The precautionary principle – or “first do no harm” – with respect to hazardous emissions, GHG emissions, and negative economic impacts on workers and vulnerable communities; and,
- The bedrock labor principle of “an injury to one is an injury to all.”

Our questions flow from a series of fact-finding actions, including:

- Attendance at many of the BAAQMD meetings and hearings;
- Consultation with BAAQMD technical staff;
- Meeting with environmental, environmental justice and labor allies to hear their views;
- Discussions with refinery environmental managers; and
- Studying key presentations to the board as well as the October 2016 Draft Staff Report.

We are continuing to analyze Rule 12-16; however, in light of what we have learned thus far, *we are urging the Board to postpone its decision, now slated for May 31, based on the following unanswered questions:*

1) What will be the impact on worker and community health?

The Rule does not address criteria pollutants or TACs, which are important for both worker and community health. For refineries, these include diesel particulate matter from diesel-fired equipment, benzene from process leaks, 1,3-butadiene and others. We believe an emissions rule should include both criteria pollutants and TACs, in addition to GHGs.

2) Is there evidence of co-benefits at the specific refineries covered by the proposed rule?

USW members and the communities around our workplaces share the same air and water, and we are a longstanding supporter of actions that simultaneously protect refinery workers and refinery communities. However, it is not clear to us that, in this case, that placing caps on GHGs would have the co-benefit of also reducing criteria pollutants and TACs. The pollution control technologies to capture particulate matter, for example, differ from those that are designed to capture volatile organic compounds (VOCs), such as 1,3-butadiene and others. It is also not clear to us that BAAQMD could regulate emissions based on the theory that doing so would provide indirect co-benefits to health.

Furthermore, the BAAQMD's own October 2016 staff report (page 20) raised significant questions about the efficacy of co-benefits when applied to specific Bay Area refineries:

"Co-benefits" are a theoretical interest only until such co-benefits are documented. The Air District is not aware of any data on which such documentation could be based. As noted above, the impacts of the criteria pollutants are primarily regional in nature. The criteria pollutant with the greatest likelihood of impacting the health of local communities is PM_{2.5}. As Figure 2 shows, the Air District's current monitoring network provides no evidence of disproportionate impact on refinery communities from this pollutant. The Air District's evaluation of risk from toxic air contaminants indicates that the majority of the toxic risk from refineries is from benzene from leaks and particulate matter from diesel-fired engines (diesel PM). The proposed cap would have no effect on the risk from these toxic air contaminants."

3) Will capping GHGs at refineries align with the state's cap-and-trade program?

It is not clear to us how capping GHGs from individual sources can be consistent with both the theory and operation of the state's cap-and-trade policies under Health and Safety Code §40727. Shouldn't this also be resolved before proceeding with this Rule? We recognize that the California Air Resources Board recently weighed in with a suggestion that CARB and BAAQMD work together to ensure Rule 12-16, Rule 13-01 and CARB regulations are complementary. CARB suggested establishing an "industrial source action committee" within the California Air Pollution Control Officers' Association. We support this proposed structure so that the BAAQMD and ARB can together and take the necessary time to figure out how various approaches might work – or not work – together and alone. As noted above, the USW will gladly participate in such a committee.

4) Would the cap proposed under Rule 12-16 conflict with the occasional need for refineries to increase capacity due to a failure in the system?

This is a unique requirement in California because the state is isolated by time and distance from other sources of transportation fuels and is therefore nearly self-sufficient in fuel

production. Imports make up only between three and six percent of total statewide supply for the 15 billion gallons of gasoline consumed each year. Total statewide gasoline demand rose 3.9 percent between 2013-2015.

California is able to shift production capacity internally when needed. Following the February 2015 Exxon Mobil explosion, which took that refinery off line, Bay Area refineries went from supplying about 45 percent of the state's gasoline to supplying about 60 percent, an increase of 33 percent. This required an increase in output from two million barrels per week to about 3.2 million barrels per week. The capacity of the Bay Area's refineries to expand was an important factor in mitigating the negative economic impact of the Exxon incident, which a 2015 RAND analysis concluded caused a \$6.9 billion contraction in the state's economy.

Would Rule 12-16 trigger a violation if a refinery increased their output in response to a supply failure?

5) Will Rule 12-16 result in GHG "leakage" and higher gasoline prices?

In the wake of the Exxon explosion, imported gasoline from foreign sources rose from meeting about three percent of total statewide demand to about eight percent of demand, or from about 140,000 barrel per week to 420,000 barrels per day. This represented an increase of 42 percent in total imported gasoline statewide.

In light of the 3.9 percent growth in statewide gasoline demand between 2013-15, as well as the potential for system failures, could Rule 12-16 lead to an increase in imported gasoline, both continuously and episodically, as refineries find it impossible to increase production?

Would this imported gasoline come with a larger GHG footprint for refining and transportation, thereby defeating the purpose of Rule 12-16 to reduce GHGs? Would the higher costs associated with importing gasoline into California be passed along to the public, where it would be felt most immediately among lower income residents?

We believe the possibility of "GHG leakage," whereby carbon and other GHGs are simply moved from one regulated location (in this case the Bay Area) to a less regulated location, should be investigated as a potential unintended consequence of this rule before it is subject to further actions by the Board.

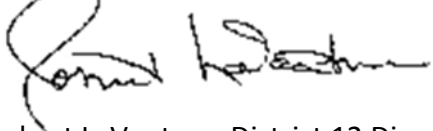
Moreover, we recognize that 12-16 could impede the ability of any of the state's refineries to expand, even if the expansion would be necessary to produce transportation fuels with lower carbon intensity. To meet its GHG objectives by 2020, California must be able to take every step to reduce the carbon intensity of transportation fuels, since this sector is by far the largest emitter of GHGs each year. If a refinery expansion could meet the state's need for lower-carbon fuels, why would the District implement rules that would prohibit such an expansion?

Finally, we strongly favor regulatory approaches that encourage our domestic industries to continually improve their environmental performance by investing in improved operations and infrastructure, as compared to turning to imported products and allowing domestic productive capacity to decline. We do not see anything in Rule 12-16 that would motivate the Bay Area refineries to invest in their operations and infrastructure, and we expect the result would be an increase in imports, with all of their environmental and economic downsides. A more effective

rule would steer industry toward investment, not disinvestment.

Overall, we continue to appreciate the District's efforts to improve air quality in our communities, and to respond to these comments and those of other stakeholders. We ask you to exercise caution – to first do no harm – and postpone consideration of Rule 12-16. We pledge to work with your staff and other stakeholders to address the questions we have raised.

Sincerely,



Robert LaVenture, District 12 Director
United Steelworkers (USW), District 12



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cc. Ron Espinoza, USW District 12 Sub-District Director
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